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December 18, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St Street, S.W.
Washington, DC 20554
Attention: Video Services Division

Note: Exempt from Filing Fees

Re: MB Docket No. 03-15 -- NYC-DoITT Supplement to Request for a Six-Month Waiver of Replication/Maximization Protection Deadline and Extension of Time for WNYE-DT, and Request for Further Extension of Waiver (Facility ID: 6048/FRN: 0008351835)

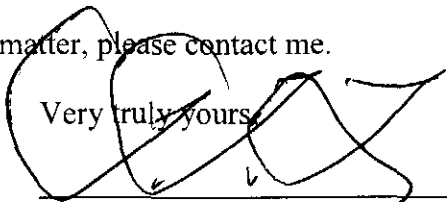
Dear Ms. Dortch:

On behalf of the City of New York's Department of Information Technology and Telecommunications ("DoITT"), licensee of non-commercial educational television station WNYE-DT, New York, NY, I enclose herewith a supplement to DoITT's request for waiver of the DTV replication/maximization protection deadline and six-month extension of time for DoITT to construct and operate full-power DTV facilities.

Since DoITT is the licensee of a non-commercial broadcast station, no filing fee is required in connection with this request.

If there are any questions concerning this matter, please contact me.

Very truly yours,


Tillman L. Lay
Counsel for New York City
Department of Information Technology and
Telecommunications

TLL:mb
Enclosure
cc: Mr. Shaun Maher (shaun.maher@fcc.gov)



Department of Information Technology and Telecommunications | The City of New York

December 18, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
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445 12th St Street, S.W.
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Dear Ms. Dortch:

The Department of Information Technology and Telecommunications ("DoITT") of the City of New York ("City"), licensee of noncommercial educational television station WNYE-TV/DT ("WNYE"), by its attorneys, hereby submits this supplement ("Supplement") to its request filed in this proceeding on July 7, 2006, for a six-month waiver ("July Waiver Request")¹ from the replication/maximization protection deadline established in the *Second DTV Periodic Review Report and Order*.² This Supplement provides updated information concerning the progress WNYE has made since filing of the July Waiver Request toward full DTV buildout completion, including a projected timeline for completion of the construction, and a supplemental request for an extension

¹ A copy of the July Waiver Request is attached hereto as an Exhibit.

² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, 18314-15, ¶ 78 (2004) ("Second DTV Periodic Review Report and Order" or "Second Order"). By Public Notice DA 06-1372 (June 29, 2006), the Commission extended the

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of the waiver requested in the July Waiver Request until September 30, 2007.

Background

As described in the July Waiver Request, DoITT is currently operating WNYE as a reduced-power DTV station from Brooklyn Technical High School.³ WNYE's construction permit ("CP") for a full-power DTV station currently provides for a 20 kilowatt transmitter at an elevation of approximately 1300 feet on the Empire State Building ("ESB"), capable of reaching approximately 18.5 million viewers.⁴ As fully described in the July Waiver Request, the fallout from 9/11 detrimentally affected WNYE's ability to secure proper siting for its planned full-power DTV transmitter on the ESB, and consequently WNYE commissioned engineering work for relocating its permanent DTV transmitter to the Four Times Square building, which will expedite WNYE's transition to full-power DTV. By the terms of WNYE's original STA (File No. BDSTA 20020412AAZ), the CP was automatically extended until the deadline set forth in the Second Order and the 2006 Public Notice. Out of an abundance of caution, WNYE also filed a Form 337 application for a six-month extension of its CP contemporaneously with the July Waiver Request. That CP extension application (File No. BEPEDT-

deadline for seeking a waiver of the DTV replication/maximization protection requirements until July 7, 2006 ("2006 Public Notice").

³ See File No. BDSTA 20020412AAZ (April 23, 2002); File No. BEDSTA 200520623ADF (Sept. 21, 2005). See also File No. BEDSTA 20041221ACS (Jan. 25, 2005), File No. BDSTA 20040617AGC (June 30, 2004); File No. BEDSTA 20021010AAZ (Oct. 16, 2002).

⁴ WNYE-DT's CP was originally granted on June 6, 2003 (File No. BEPEDT-20030227ABV) and extended on February 2, 2004 (File No. BEPEDT-20031003ABK).

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20060707AFI), as well as the July Waiver Request, are currently pending before the Commission.

Recent Developments and Estimated Timeline for Full DTV Buildout

Since the July Waiver Request, WNYE has diligently pursued completion of its full-power DTV buildout as quickly as possible. It has executed agreements with the Corporation for Public Broadcasting for critical funding that was earmarked for use in WNYE's DTV upgrades, and has also received approval from the City's Office of Management and Budget for the balance of the expected needed funding. An RFP for the design, construction and installation, and support services for WNYE's planned primary DTV transmitter at the Four Times Square building, as well as the upgrade to the backup site at Brooklyn Tech, was issued on September 12, 2006. Final responses/bids were received by DoITT on December 11, 2006.

Between the issuance of the RFP and the submission of bids, potential bidders submitted and received answers to several questions related to the DTV upgrade projects. While the resulting clarifications, distributed as an addendum to the RFP, necessitated extending the bid submission deadline until December 11, this exercise will help to expedite imminent contract negotiations with the winning bidder. The first internal DoITT meeting to address the responses was held on December 13, 2006. WNYE expects to have made its vendor selection and begun contract negotiations with that vendor by the end of the year. WNYE further hopes to reach agreement on the material terms of the contract with the selected vendor in January or February 2007, and that work

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may begin on the Four Times Square portion of the DTV project reasonably promptly thereafter. DoITT projects that this timeline would result in an estimated completion date in September 2007.

Conclusion and Supplemental Waiver Request

Accordingly, WNYE respectfully renews its request for a waiver of the replication/maximization protection deadline for WNYE-DT, and further requests that the Commission extend the waiver requested through September 30, 2007, so that WNYE may retain its current interference protection while it completes construction of its full-power DTV facilities. As with WNYE's July Waiver Request, WNYE will, in an abundance of caution, file contemporaneously with this request an additional Form 337 to apply for an extension of its CP to be coterminous with the September 30, 2007, date requested here.

As described in more detail in the July Waiver Request, granting this request will significantly serve the public interest, not only because it will preserve the ability of New York City residents in WNYE-DT's protected areas to enjoy WNYE's rich variety of educational, cultural and entertainment programming, but also because WNYE's full-power digital channel is critical to the City's expansion of its Emergency Public Communications System both to make that system more robust and to enable it to reach more residents in the New York City metropolitan area. WNYE-DT plays a vital role throughout New York City, and it can only successfully fulfill its important public mission if it can retain its current interference protection.

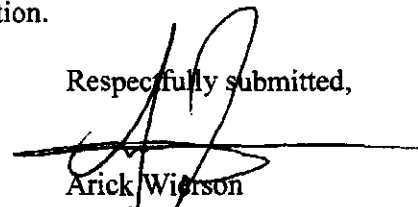
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Thank you for your consideration. Please contact our counsel, Tillman L. Lay, Spiegel & McDiarmid, (202) 879-4022, or David Berman, Esq., (212) 788-6567, with any questions or if you require further information.

Respectfully submitted,



Arick Wierzon
General Manager
NYC Media Group, DoITT

Attachment

cc: Mr. Shaun Maher (shaun.maher@fcc.gov)

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July 7, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St Street, S.W.
Washington, DC 20554
Attention: Video Services Division

Note: Exempt from Filing Fees

**Re: MB Docket No. 03-15, NYC-DoITT Request for a Six-Month Waiver of
Replication/Maximization Protection Deadline and Extension of Time for
WNYE-DT (Facility ID: 6048/FRN: 0008351835)**

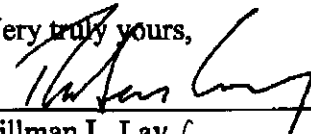
Dear Ms. Dortch:

On behalf of the City of New York's Department of Information Technology and Telecommunications ("DoITT"), licensee of non-commercial educational television station WNYE-DT, New York, NY, I enclose herewith a request for waiver of the DTV replication/maximization protection deadline and six-month extension of time for DoITT to construct and operate full-power DTV facilities.

Since DoITT is the licensee of a non-commercial broadcast station, no filing fee is required in connection with this request.

If there are any questions concerning this matter, please contact me.

Very truly yours,


for Tillman L. Lay
Counsel for New York City
Department of Information Technology and
Telecommunications

cc: Mr. Shaun Maher (shaun.maher@fcc.gov)



July 7, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St Street, S.W.
Washington, DC 20554
Attention: Video Services Division

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Replication/Maximization Protection Deadline and Extension of Time for
WNYE-DT (Facility ID: 6048/FRN: 0008351835)**

Dear Ms. Dortch:

Pursuant to the FCC's recent Public Notice,¹ the Department of Information Technology
and Telecommunications ("DoITT") of the City of New York ("City"), licensee of
noncommercial educational television station WNYE-DT ("WNYE"), hereby requests for

¹ FCC Public Notice, "DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline," DA 06-1255 (June 14, 2006) ("2006 Public Notice").

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WNYE-DT² a six-month waiver from the replication/maximization protection deadline established in the *Second DTV Periodic Review Report and Order*.³

A. Background.

Pursuant to a Special Temporary Authority ("STA") originally granted by the FCC on April 23, 2002,⁴ and subsequently modified and extended by the FCC, through and including September 21, 2006,⁵ DoITT is currently operating WNYE-DT as a reduced-power DTV station (1 kilowatt) from Brooklyn Technical High School ("Brooklyn Tech") at an elevation of approximately 450 feet and serving an estimated 13.5 million viewers. WNYE's DT construction permit ("CP") for full-power WNYE-DT currently provides for a 20 kilowatt transmitter at an elevation of approximately 1300 feet on the Empire State Building ("ESB"), capable of reaching approximately 18.5 million viewers.⁶

² Facility ID No. 6048; current DTV channel 24, current NTSC channel 25; tentative DTV channel designation 24. Public Notice, "Tentative Digital Channel Designations for Stations Participating in the First and Second Rounds of the DTV Channel Election Process," DA 06-1082 (May 23, 2006).

³ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, 18314-15, ¶ 78 (2004) ("Second DTV Periodic Review Report and Order" or "Second Order"). By FCC Public Notice, "DTV Channel Election Issues," DA 06-1372 (June 29, 2006), the Commission extended the deadline for seeking a waiver of the DTV replication/maximization protection requirements until July 7, 2006.

⁴ File No. BDSTA 20020412AAZ (April 23, 2002).

⁵ File No. BEDSTA 20050623ADF (Sept. 21, 2005). See also File No. BEDSTA 20041221ACS (Jan. 25, 2005), File No. BDSTA 20040617AGC (June 30, 2004); File No. BEDSTA 20021010AAZ (Oct. 16, 2002).

⁶ WNYE-DT's CP was originally granted on June 6, 2003 (File No. BEPEDT-20030227ABV) and extended on February 2, 2004 (File No. BEPEDT-20031003ABK).

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As noted above, WNYE's most recently granted STA for its reduced-power DTV channel operation expires on September 21, 2006. By the terms of WNYE's original STA (File No. BDSTA 20020412AAZ), the CP was automatically extended until the deadline set forth in the *Second Order* and the *2006 Public Notice*. The *2006 Public Notice* makes clear that licensees with STAs "will no longer receive automatic [CP] extensions . . . as of the July 1, 2006, deadline," but does not clearly state whether the CPs of licensees like WNYE-DT with pre-existing STAs having expiration dates after the July 1, 2006, deadline, will remain in effect until the expiration of the pre-existing STA. Out of an abundance of caution, WNYE-DT is therefore filing a Form 337 contemporaneously herewith requesting a six-month extension of its CP, the duration of the waiver requested herein.

Due to delays resulting from a transfer of WNYE from the New York City Board of Education ("Board")⁷ to DoITT, budget constraints within the City and financial hardship within WNYE, the reorganization and transitioning of the City's emergency public communications practices after the September 11, 2001, attack ("September 11th"), and antenna siting issues that have arisen at ESB, WNYE needs additional time to complete its full-power DTV buildout in

⁷ At the time, the Board, unlike DoITT, was not under the control of the Mayor. By act of the New York state legislature, the Board was subsequently brought under the direct control of the Mayor.

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order to provide maximized coverage under its license. Granting the requested waiver will serve the public interest by enhancing the City's ability to communicate emergency and other vital public information to residents and the media throughout the New York City metropolitan area through technologies made possible by WNYE's digital channel.

WNYE is currently one of only three noncommercial educational television stations, with intended service areas in metropolitan New York, serving the needs of New York City viewers.⁸ Its programming features content highlighting New York City's lifestyle, culture and history. In addition, after the transfer to DoITT, WNYE has been used by the City to communicate to viewers and the media about critical public events, including, for example, the anthrax scare in February 2006 and the transit strike in December 2005. Moreover, WNYE's digital channel is a vital component of the City's planned expansion of its post-9/11 public warning mechanisms and is directly tied to the City's Emergency Public Communications Systems (including the City's Emergency Alert System).⁹ The success of WNYE's digital transition – and thus the retention of its current interference protection – are critical to ensuring not only the continued provision of community-based noncommercial programming initiatives in New York City, but also to

⁸ See, e.g., Letter from William F. Baker, Chairman and CEO, WNET-NY ("Thirteen") to Donna Gregg, Chief, Media Bureau, FCC (May 22, 2006), available on the FCC's Electronic Comment Filing System, at http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi ("ECFS"), under proceeding 03-15.

⁹ See Section C, *infra*, for more details.

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enabling the City to communicate directly with residents and the media throughout the metropolitan area on events of public importance, including providing a digital television mechanism for the City to deliver potentially life-saving emergency information to New York City area residents, and to other broadcasters as well.¹⁰

Denial of this waiver request would lead to a dramatic loss of coverage for the City's ability to make emergency communications both to City residents and to those who live in the New York metropolitan area. It would also lead to the loss of WNYE's unique noncommercial educational DTV programming to millions of viewers throughout the metropolitan area.¹⁰ Indeed, loss of interference protection beyond WNYE's current STA coverage area would result in the possible loss of service for up to 5 million viewers.

B. Financial Hardships and Events Beyond DoITT's Control.

Consistent with its longstanding commitment to noncommercial educational television, the Commission will grant waivers of the replication/maximization protection deadline if "the

¹⁰ A substantial component of WNYE's programming includes original NYC Media Group productions that are not on other public television stations in the New York metropolitan area.





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licensee can demonstrate that it is unable to provide the required service because of severe financial constraints or circumstances beyond its control.”¹¹

Despite WNYE’s diligent efforts to meet the *Second Order’s* requirements, WNYE is unable to meet the July 7, 2006 full DTV buildout deadline due to: 1) the transfer of WNYE from the Board to DoITT, which was not consummated until January 2005, and which greatly shortened the period available to DoITT to complete the digital buildout; 2) budget constraints within the City that resulted in financial hardships for WNYE; and 3) antenna and transmitter siting problems with ESB. As explained below, some of these obstacles are related to the unique and ongoing adverse effects caused by the September 11th terrorist attacks. In that regard, the challenges faced by WNYE-DT are more than unique; they are truly unprecedented and extraordinary.

Granting the requested waiver would also serve the public interest. The City intends to use WNYE-DT as an integral component of its emergency public information systems.

WNYE’s full-power digital channel will enable it to pursue unique methods to communicate directly with residents and media throughout the metropolitan area during emergencies and on

¹¹ 2006 Public Notice, at 2. See also *Second Order*, 19 FCC Rcd. at 18317, ¶ 83 (“In addition, we are adopting a waiver process for stations that truly cannot afford to build out to these minimum requirements, or that cannot build out for other reasons beyond their control.”); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

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other events of public concern. Moreover, loss of interference protection beyond its current full-power DTV coverage area would prevent the City from establishing critical redundancy in its ability to provide emergency public information directly to residents of the NYC metropolitan area, a redundancy that is absolutely vital in the post-September 11th world.

1. The Transfer of WNYE From the Board to DoITT Delayed DoITT's Ability to Complete Full DTV Buildout.

WNYE's CP envisioned a location on the tower at ESB about 100 feet above WNYE's current NTSC location on the ESB. Before the 9/11 tragedy, WNYE was one of only a few broadcast stations on ESB, with most local broadcast stations being located at the World Trade Center ("WTC"). After September 11th, in keeping with the station's focus on serving not only the needs of the City's viewers but also the general public interest, WNYE made some of its facilities at ESB and in Brooklyn available as a back-up facility to the federal government and many commercial broadcasters, including WABC, New York 1, WNET and WNYC/NPR (radio). During October and November 2001, at the request of the Department of Defense and FEMA, WNYE also provided experimental DTV transmission services (using a 250-watt transmitter and antenna on loan from the manufacturer) to emergency workers in the Ground

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Zero area. All of these activities created a tremendous personnel drain on the station's human resources, which historically had only twenty full-time employees.

After September 11th, several commercial broadcasters that had been located elsewhere reached agreement with ESB management to build a new master antenna at the ESB, which was placed in WNYE's planned DTV aperture on the tower. Due to scarcity of suitable broadcast transmission locations in the City after 9/11, the effect of this agreement between ESB and commercial broadcasters was to escalate dramatically WNYE's siting costs on the ESB master antenna to the point where they became cost-prohibitive for WNYE. Having had its planned DTV transmission station location effectively displaced from its original ESB DTV CP location and suffering adverse financial conditions, the Board – WNYE's then-licensee¹² – focused its extremely limited financial resources for WNYE on expediting provision of DTV service at reduced power from Brooklyn Tech, a site that, unlike ESB, was immediately available to the Board at no cost. The Commission granted the Board an STA for DTV operation at Brooklyn Tech, covering only city-grade contour as an interim step toward full-power DTV service.¹³ Focusing limited resources on the low-power facility seemed a strategically-balanced

¹² The Commission consented to the transfer of WNYE's licenses from the Board to DoITT in late 2004. See File No. BALET 20041008ACG.

¹³ See notes 4 & 5 *supra*.

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compromise between fulfilling the FCC's interim mandate and maintaining the facility that proved to be a key resource to other broadcasters and the federal government (and that might be needed again), following September 11th.

After the citywide power blackout of 2003, it became clear to the City that being able to own and operate a TV and radio station directly would be a unique tool to communicate to the public during emergencies and for other homeland security reasons. The City therefore pursued a plan for the City, through DoITT, to acquire WNYE from the Board. The City spent a year transferring staff, property, budget and the license from the Board to DoITT.

It was not until January 11, 2005, several months after the release of the Commission's *Second Order*, that the transfer of control of WNYE from the Board to DoITT was consummated.¹⁴ The transfer was necessary, among other reasons, because the Board lacked the budget and the funds to complete the DTV transition. The transfer of the station not only strengthened one of New York City's only noncommercial TV stations, but also provided the

¹⁴ See Board's Form FCC 316, "Application [to FCC] for Consent to Assign Broadcast Station Construction Permit or License or to Transfer Control of Entity Holding Broadcast Station Construction Permit or License", available on the FCC's CDBS Electronic Filing System, at http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm, under file no. BALET 20041008ACG (FCC grants the City consent to transfer control of all WNYE stations – WNYE-FM, WNYE-TV and WNYE-DT – from Board to DoITT, on October 26, 2004). Notwithstanding the FCC's approval, DoITT, as an agency of the City, could not assume control until January 11, 2005, by Executive Order and Act of the Mayor following the Commission's approval. *Id.*

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City with an invaluable mechanism for delivering emergency public information to area residents and local broadcasters.

The transfer, however, left DoITT with an abbreviated timeframe within which to complete the transition to full-power DTV. After the transfer of WNYE, DoITT had to make major improvements in the station's facility and operational model. Because WNYE was to be incorporated into the City's Emergency Public Communications Systems, special care and attention was taken on training and protocols, which was time-consuming but essential.

2. Financial Hardship.

The events of September 11th had unique and substantial adverse effects on the City's budget and forced the City to make difficult budget decisions. While the City remained fiscally sound, the impact of September 11th on the City's budget, and its budget priorities, occurred over an "economically significant period of time,"¹⁵ and deprived WNYE of capital funding that might otherwise have been available for the DTV buildout.

Upon consummation of WNYE's license transfer from the Board to DoITT in January 2005, DoITT immediately commenced its aggressive pursuit of external funding sources for the

¹⁵ *Revision of the Commission's Rules and Policies Affecting the Conversion to Digital Television, on recon.*, 16 FCC Rd. 20594, 20611, ¶ 46 (2001) ("First DTV Periodic MO&O").





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DTV buildout. DoITT promptly sought grants from the Corporation for Public Broadcasting's ("CPB") Digital Distribution Fund ("DDF") in the very first round in which it was eligible to participate (Round 8 in May/June 2005). The \$2,000,000 in CPB grants that DoITT ultimately obtained were earmarked for WNYE's comprehensive DTV upgrade, including full-power transmission buildout and master control system improvements to ensure fully compliant DTV facilities. To be eligible for the CPB grants, DoITT had to secure a commitment from the City's Office of Management and Budget ("OMB") to match the CPB grants. DoITT obtained OMB's commitment on July 20, 2005.

Despite these prompt efforts, however, the DTV conversion funding process was delayed by circumstances beyond WNYE's control. WNYE applied for CPB's DDF grant in July 2005 and expected the grant to arrive in early fall 2005, which would have given WNYE a reasonable time to meet the July 7, 2006, DTV full buildout deadline. CPB, however, did not approve WNYE's grant request until January 26, 2006, and DoITT has yet to receive any of that funding. Thus, the delayed disbursement of the \$2,000,000 in DDF grant awards from the CPB has been a significant obstacle to WNYE's current buildout efforts.

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While financial hardship alone is typically not a sufficient reason for an extension,¹⁶ circumstances here are far from typical. The Commission has recognized that the transition to digital television is a “massive and complex undertaking”.¹⁷ Moreover, the Commission has also recognized that noncommercial educational stations “face a unique challenge in the construction of their DTV facilities”.¹⁸ Since the onset of DTV conversion, the FCC has expressed its commitment to noncommercial educational television and acknowledged the special difficulties these stations would face in transitioning to DTV.¹⁹ The Commission also has recognized that the scope of special relief would need to be tailored on a station-by-station basis.²⁰

WNYE’s build-out efforts have been delayed both by the City’s need to reprioritize its budget priorities after September 11th and by the delay in receiving critical CPB grant funding that was specifically earmarked for needed transition upgrades (and relied upon in WNYE’s buildout projections). These were unique events far outside WNYE’s control. Absent the

¹⁶ *Advanced Television Systems and Their Impact upon the Existing Broadcast Service*, 12 FCC Rcd. 12809, 12852 (1997) (“Fifth Report and Order”). See also *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 18 FCC Rcd. 20987, 20997 ¶ 29 (2003).

¹⁷ *Second Order*, at ¶ 11.

¹⁸ *DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Noncommercial Educational Television Stations with May 1, 2003 Deadline*, 20 FCC Rcd. 5783, 5786 ¶ 20 (2005) (“Build-out Order”).

¹⁹ *Fifth Report & Order*, 12 FCC Rcd. at 12852.

²⁰ See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd. 5946 (2001) (“First DTV Periodic Report and Order”).





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necessary critical funding, which WNYE has not yet received (but expects to receive shortly), WNYE could not accomplish, and could not reasonably be expected to have accomplished, its goal of meeting the replication and maximization requirements within the Commission's deadline.

3. ESB Siting Problems.

The relocation of broadcasters in the City to ESB after September 11th has also detrimentally affected WNYE's ability to secure proper siting for its planned full-power DTV transmitter on the ESB. As noted above, the loss of the WTC unsettled the long-term plans of local stations for continued provision of both NTSC and DTV television service in the New York metropolitan area because of the unprecedented need to relocate broadcast transmission facilities to the ESB. This spike in demand for broadcast transmission capacity at ESB, in turn, caused other stations to move onto WNYE's previously planned DT location at ESB and, at the same time, dramatically increased the cost of leasing transmission space at ESB.

The siting problems at ESB continued after DoITT assumed the WNYE licenses in early 2005. DoITT promptly entered into lease negotiations with ESB management, hoping that the ESB lease negotiations would conclude quickly and before the expected disbursement of the CPB funds, allowing sufficient time for the commencement of work at the ESB site. However,

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one result of the move of other broadcast station antennae to ESB was that there was no longer space for both WNYE's analog and digital antennas. If WNYE wished to site its digital antenna transmission facilities at ESB, it would have had to remove the analog antenna and transmit its analog signal from elsewhere. For many reasons, including increased costs and the risk of potential temporary loss of analog signal reach, ESB no longer was a suitable site for WNYE's digital antenna and transmission facilities. Thus, while DoITT vigorously pursued arrangements for its planned DTV site at ESB, it has not been able to secure such arrangements due to circumstances beyond its control.

Confronted with these difficulties concerning WNYE's proposed DTV siting location at ESB, WNYE has pursued the alternative of relocating its permanent DTV transmitter site to Four Times Square.²¹ Despite its unique funding and siting difficulties, WNYE has, and will continue to diligently pursue steps to complete full-power DTV capability as quickly as possible. DoITT has already commissioned engineering work for the Four Times Square location, approved an RFP for construction and installation of WNYE's primary DTV transmitter, and expects to pursue contract discussions with vendors shortly.

²¹ WNYE expects to file a CP modification application for the Four Times Square site promptly when arrangements there have been firmed up.





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4. Reasonable Steps Taken by DoITT to Expedite DTV Buildout.

In sum, within six months of acquiring the WNYE licenses from the Board, DoITT identified and applied for CPB grant funding for the DTV buildout, obtained a matching commitment from the City's OMB, and reinvigorated site lease negotiations with ESB. Having thereafter encountered difficulties in consummating ESB site arrangements, DoITT has pursued alternative siting at Four Times Square. Indeed, because DTV transmission facilities can be installed more quickly and at lower cost at Four Times Square than at ESB, moving WNYE's DTV transmission and antenna site to Four Times Square will expedite WNYE's transition to full-power DTV. DoITT therefore has taken, and continues to take, all reasonable steps to expedite WNYE's transmitter to full-power DTV as quickly as possible.

C. **Granting the Requested Waiver Will Serve the Public Interest By Enabling the City to Pursue New Emergency Alert Initiatives That Will Allow It To Communicate Directly With Residents Throughout the NYC Metropolitan Area.**

As with any waiver request, the Commission may grant a waiver of the replication/maximization protection deadline upon a showing that the waiver requested will

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“serve the public interest”.²² In the case of WNYE, granting the waiver will indeed serve the public interest.

Replication/maximization protection of WNYE’s digital channel is critical to the City’s expansion of its Emergency Public Communications Systems, both enabling it to create a dedicated channel for emergency public information and to establish critical redundancy in the City’s Emergency Alert System (“EAS”) and other emergency public information systems. New York City’s EAS is built on the backbone of a local spur of the federal Emergency Alert System. As with all local EAS plans under current FCC rule, the City’s plan, unlike the federal plan, is completely voluntary for federal broadcasters. The City has established partnerships with four AM radio broadcasters to serve as our Local Primary Ones (“LP1”) stations: WABC, WINS, WCBS, and WFAN. These stations have agreed to retransmit to the best of their ability any Civil Emergency Message issued by the City.

As a City-owned broadcast station, however, WNYE-DT will be able to provide a critical degree of redundancy for the City’s EAS system. It will provide a separate means, independent of the transmission capabilities of the LP1 stations, for the City to reach directly metropolitan

²² See FCC’s Rules of Practice and Procedure, 47 C.F.R. 1.925(b)(3)(i) (“The Commission may grant a request for waiver if it is shown that ... a grant of the requested waiver would be in the public interest”); *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, on recon.*, 16 FCC Rcd. 20594, 20611-12, ¶¶ 46-47 (2001) (“*First DTV Periodic MO&O*”) (quoted in *Second Order*, 19 FCC Rcd. at 18319 n. 198).





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area residents in the case of an emergency. Thus, if a terrorist strike or natural disaster cripples or shuts down any LP1, the City will still be able to reach its residents to provide guidance in a crisis. Moreover, unlike the LP1s, WNYE will be able to provide emergency information via video that can be originated by key locations throughout the City and relayed to WNYE for broadcast. This kind of redundancy is particularly important in the case of the New York metropolitan area.

In addition to providing needed redundancy, WNYE's full-power DTV channel will enable the City to develop new mechanisms to reach residents in an emergency. As the City moves toward integrating a digital EAS platform with other forms of emergency notification via Common Alerting Protocols (CAP), WNYE's DTV transmitter will play a central role in disseminating emergency public information to both the general public and members of the media. The City is pursuing plans to use the full-power DTV channel both to multicast television signals, including devoting at least one multicast DTV channel to emergency communications, and to also use the DTV spectrum to distribute emergency messages through other media, including text messaging and datacasting to other devices such as cell phones. The City is committed to emergency public communications systems and considers the WNYE

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digital transmitter project essential to providing a full range of emergency communication services for years to come.

D. Conclusion

For these reasons, we respectfully request a six-month waiver of the replication/maximization protection deadline for WNYE-DT. Granting this request would serve the public interest because it would allow WNYE, one of only three noncommercial educational television stations with New York City as its intended service area, to retain its current interference protection while it completes construction of its digital facilities.

DoITT is a noncommercial educational broadcaster and operates station WNYE (TV/DT) on a noncommercial basis. Moreover, DoITT qualifies as a government entity. WNYE is therefore exempt from filing fees pursuant to Section 1.1114 of the Commission's rules, and exempt from regulatory fees pursuant to Section 1.1162 of the Commission's rules.

The applicant certifies that no party to this filing is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

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